

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

DAVID MCGEE, JACOB SEXTON,
RICHARD PAHL, JOSE TORRES,
KEVIN KIMBER, DANIEL MUIR,
JAMES ANDERSON,

Plaintiffs,

v.

ANDREW PALLITO, Commisioner, Vermont
Department of Corrections, ROBERT
HOFMANN, KEITH TALLON, CELESTE GIRRELL,
JOHN GORCZYK, KATHLEEN LANMAN, MICHAEL
O'MALLEY, ANITA CARBONNEL, STUART
GLADDING, DANIEL FLORENTINE, RAYMOND
FLUM, and CAROL CALLEA,

Defendants.

No. 1:04-cv-335-jgm

MEMORANDUM AND ORDER
(Docs. 289, 290, 291, 293)

Incarcerated pro se Plaintiff Kevin Kimber has filed four motions in this case.

The first two, Documents 289 and 290, docketed on January 3 and 4, 2011, respectively, are Motions to Appoint Counsel, dated and signed by Kimber on December 20, 2010. They are handwritten and identical in all material respects. Only if a pro se civil litigant's position seems "likely to be of substance" should a court consider granting a request for appointment of counsel. Cooper v. A. Sargenti Co., 877 F.2d 170, 172 (2d Cir. 1989).

Here, the Court has already adopted a Report and Recommendation dismissing the Plaintiff class's federal claims based on night-time security illumination of cells, and the Court's determination that Defendants are not liable on the class claims makes it unlikely the individual claims will be of substance. The motions for appointment of counsel are therefore DENIED.

Two other handwritten filings, Documents 291 and 293, docketed January 4 and January 11, 2011, respectively, are styled "Motion for Appeal" and are identical in all material respects, except the latter appends additional material, including a request for a hearing, and another request for counsel. The "Motion for Appeal" pages are dated and signed by Kimber on October 3, 2010. These motions are handwritten copies of another filing, Document 284, also styled as a "Motion for Appeal," dated and signed by Kimber on October 3, 2010, but filed October 6, 2010 as an objection to the Magistrate Judge's August 3, 2010 Report and Recommendation (Doc. 276). The substance of Kimber's objections to the R&R were barely intelligible and were, in any case, considered when the Court reviewed the R&R prior to adopting it.

The identical newly filed "Motion for Appeal" documents do not raise any intelligible issues the Court can address. Nor do they identify any order of the Court such that the document could be construed as a notice of appeal from that order. The motions

are therefore DENIED.

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 30th day of March, 2011.

/s/ J. Garvan Murtha
Honorable J. Garvan Murtha
Senior United States District Judge